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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

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June 5, 2013

VIA HAND DELIVERY

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Room 1046
Washington, D.C. 20573

Re: Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc., *et al.*
FMC Docket No. 09-01

Dear Ms. Gregory:

Enclosed please find one (1) original and five (5) copies of Olympus Respondents' Statement Confirming the Record of this Proceeding, for filing in the above-referenced proceeding.

In accordance with Commission Rule 2(e), 46 C.F.R. § 502.2(e), we will send an electronic PDF copy of the Statement to the Commission after filing.

Kindly date stamp the extra copy of the Statement and return the same to our courier.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Warren L. Dean', written over a horizontal line.

Warren L. Dean

Enclosures

cc: Service List



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BEFORE THE FEDERAL MARITIME COMMISSION 2013 JUN -5 PM 4:36

MITSUMI O.S.K. LINES LTD.,

Complainant

v.

**GLOBAL LINK LOGISTICS,
INC., et al.,**

Respondents.

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

Docket No. 09 -01

**OLYMPUS RESPONDENTS' STATEMENT
CONFIRMING THE RECORD OF THIS PROCEEDING**

Respondents Olympus Growth Fund III, L.P. ("OGF"), Olympus Executive Fund, L.P. ("OEF"), Louis J. Mischianti ("Mischianti"), L. David Cardenas ("Cardenas") and Keith Heffernan ("Heffernan") (hereinafter collectively referred to as the "Olympus Respondents") file this statement to ensure that there is no confusion, misrepresentation or mistake as to the Olympus Respondents' position on split routing on the record in this proceeding.

In its opposition to the Olympus Respondents' *Motion to Strike* (filed May 24, 2013), Complainant MOL argued that it did not falsely represent the Olympus Respondent's position on the practice of split routing. MOL recognized that the Olympus Respondents never believed, stated, agreed or conceded that the split routing practice violates Section 10(a)(1). Notwithstanding this recognition, MOL asserted that the Olympus Respondents "have never denied that it [split routing] is a violation of the Shipping Act for a shipper to provide a carrier with false information about the destination of cargo in order to obtain transportation at rates other than those that are

lawfully applicable." Complainant's Opposition to Olympus Respondents' Motion to Strike Allegedly False Statements in Complainant's Reply Brief in Further Support of Its Claims Against Respondents (filed May 31, 2013) at p. 3.

MOL is wrong. In Section III of the Amended Complaint (at 3; MOL App. 1001), MOL alleged that the Respondents "knowingly and willfully engaged" in split routing in violation of the Shipping Act:

This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. 41301. MOL is seeking reparations for injuries caused to it by Global Link, OGF, OEF, Olympus Partners, Louis J. Mischianti, David Cardenas, Keith Heffernan, CJR, and Chad Rosenberg (collectively "the Respondents") as a result of their violations of Sections 10(a)(1) and 10(d)(1) of the Shipping Act, 46 U.S.C. 41102(a), 41102(c). As more particularly alleged below, the Respondents knowingly and willfully engaged in a scheme to fraudulently obtain ocean transportation for property for less than the rates and/or charges that would otherwise apply...

In their Verified Answer to MOL's Amended Complaint, the Olympus Respondents expressly **denied** MOL's allegations. See Verified Answer of Respondents Olympus Growth Fund III, LP, Olympus Executive Fund, LP, Louis J. Mischianti, L. David Cardenas, and Keith Heffernan to the Amended Complaint of Mitsui O.S.K. Lines, Ltd. at 6 (MOL App. 1507).

The Olympus Respondents' repeated that express **denial** in response to allegations of engaging "in a willful and deliberate fraudulent scheme ... in violation of Section 10(a)(1) of the Shipping Act" in Part V.A. of the Amended Complaint (at 7; MOL App. 1005):

As described in Part IV above, the Respondents engaged in a willful and deliberate fraudulent scheme to obtain ocean transportation for property

for less than the rates and/or charges that would otherwise apply in violation of Section 10(a)(1) of the Shipping Act, 46 U.S.C. 41102(a).

See the Olympus Respondents' express **denial** in the Verified Answer of Respondents Olympus Growth Fund III, LP, Olympus Executive Fund, LP, Louis J. Mischianti, L. David Cardenas, and Keith Heffernan to the Amended Complaint of Mitsui O.S.K. Lines, Ltd. at 9 (MOL App. 1510); Amended Complaint at 7 (MOL App. 1005).

The Olympus Respondents' **denials** that split routing is a Shipping Act violation permeate the docket. In the Olympus Respondents' Motion to Dismiss, the Olympus Respondents stated: "The practice of split-routing does not violate Section 10(a)(1) of the 1984 Act because the practice does not involve ocean transportation." Motion to Dismiss Improperly Filed Complaint for Lack of Subject Matter Jurisdiction and For Failure to State a Claim and For Other Appropriate Relief (Dkt. Entry 10; filed June 17, 2009) at 10 (O.R. App. 187). And in the Olympus Respondents' reply to MOL's motion to file an amended complaint, the Olympus Respondents stated "Mitsui seeks to add 'Olympus Partners' as a respondent without proposing to allege – because Mitsui cannot credibly allege – that 'Olympus Partners' is regulated by the Act *for purported violations that are not even covered by the Act.*" Reply of Respondents Olympus Growth Fund III, LP, Olympus Executive Fund, LP, Louis J. Mischianti, David Cardenas, and Keith Heffernan to Motion for Leave to File an Amended Complaint (Dkt. Entry 14; filed June 31, 2009) at 5 (emphasis added).

Even outside this proceeding, the Olympus Respondents have **denied** that split routing is a violation of the Shipping Act. The Olympus Respondents initiated a

proceeding before the Commission, Docket No. 08-07, seeking a declaratory order or rulemaking that split routing was outside the scope of Section 10(a)(1). That petition was dismissed on jurisdictional and procedural grounds.

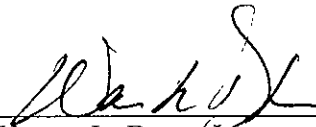
These instances are only some of the many instances where the Olympus Respondents, in words and substance, have **denied** that split routing is a violation of Section 10(a)(1) of the Shipping Act. MOL's statement to the contrary misrepresents the record.

Olympus Respondents' Statement
Confirming the Record of This Proceeding
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Dated: June 5, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE


I hereby certify that on June 5, 2013, I served the foregoing document on the following individual(s) by electronic mail and regular mail:

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